

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

KIERAN RAVI BHATTACHARYA)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 3:19-CV-00054
)	
JAMES B. MURRAY, JR., et. al.,)	
)	
)	
Defendants.)	
)	

PLAINTIFF’S MOTION TO QUASH SUBPOENA DUCES TECUM

Pursuant to Federal Rules of Civil Procedure 26(b)(1) and 45, Plaintiff Kieran Ravi Bhattacharya (“Mr. Bhattacharya”), by counsel, moves to quash or modify the subpoena *duces tecum* issued to Metropolitan Psychiatric Services (“MPS”) by Defendants in the above-captioned matter. In support of his Motion to Quash, Mr. Bhattacharya respectfully states as follows:

1. On July 13, 2021, Defendants issued a subpoena *duces tecum* upon MPS (the “Subpoena”) in connection with the above-referenced case. A copy of the Subpoena is attached as Exhibit 1.

2. MPS is a healthcare provider that is required to comply with state and federal privacy laws, including Virginia Code § 32.1-127.1:03, Subpart E of the Health Insurance Portability and Accountability Act of 1996 (“HIPPA”), and 42 C.F.R. Part 2.

3. Pursuant to Virginia Code § 32.1-127.1:03, HIPPA (42 U.S.C. 1320-d), and 42 C.F.R. § 164.502, MPS is prohibited from disclosing Protected Health Information, defined to include all “individually identifiable health information[.]” 42 U.S.C. § 1320d-6. Individually identifiable health information includes information that “relates to the individual’s past, present

or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual[.]” 45 C.F.R. § 160.103. The Subpoena requests “all medical records, narrative reports, doctor’s notes, therapists’ notes, nurses’ notes, chronological records of visits, histories, test results, x-ray reports, medications, patient registration and/or information forms, bills and charges for services, insurance forms and all other documents[.]” The documents requested clearly constitute Protected Health Information as defined in 45 C.F.R. § 160.103.

4. Federal Rule of Civil Procedure 45(3)(A)(iii) provides that, upon timely motion, this Court *must* quash or modify a subpoena that “requires disclosure of privileged or other protected matter, if no exception or waiver applies[.]” Accordingly, this Court must quash or modify the subpoena to the extent that it seeks Protected Health Information.

5. In addition, the Subpoena seeks discovery that is beyond the permissible scope of discovery permitted by Federal Rule of Civil Procedure 26(b)(1) in that the documents sought are *not* “relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” The health records that Defendants seek to obtain from the Subpoena were not cited by nor known to Defendants at the time that they suspended Plaintiff from UVA Med School and thus do not serve to explain or justify their retaliation against Mr. Bhattacharya for his questions and comments at the AMWA Microaggression Panel Discussion.

6. Accordingly, Plaintiff respectfully requests that this Court quash the Subpoena because it seeks documents and information that are protected by state and federal privacy laws

and are not within the scope of permissible discovery under Federal Rule of Civil Procedure 26(b)(1).

Date: July 28, 2021

Respectfully submitted,

KIERAN RAVI BHATTACHARYA

By: /s/ Michael J. Lockerby
Counsel

Michael J. Lockerby (VSB No. 24003)
FOLEY & LARDNER LLP
Washington Harbour
3000 K Street, N.W., Suite 600
Washington, D.C. 20007-5109
Telephone: (202) 672-5300
Facsimile: (202) 672-5399
E-mail: mlockerby@foley.com

*Counsel for Plaintiff,
Kieran Ravi Bhattacharya*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July 2021, I electronically filed the foregoing PLAINTIFF'S MOTION TO QUASH SUBPOENA DUCES TECUM with the Clerk of the Court using the CM/ECF system and will send the foregoing via email to the following counsel of record for Defendants:

Madeline M. Gibson, Esq.,
Assistant Attorney General
Calvin C. Brown, Esq.,
Assistant Attorney General
Brittany A. McGill, Esq.,
Assistant Attorney General
Office of the Virginia Attorney General
Commonwealth of Virginia
202 North Ninth Street
Richmond, Virginia 23219
Email: mgibson@oag.state.va.us
Email: cbrown@oag.state.va.us
Email: BMcGill@oag.state.va.us

s/ Michael J. Lockerby

Michael J. Lockerby (VSB No. 24003)
FOLEY & LARDNER LLP
Washington Harbour
3000 K Street, N.W., Suite 600
Washington, D.C. 20007-5109
Telephone: (202) 672-5300
Facsimile: (202) 672-5399

Counsel for Plaintiff, Kieran Ravi Bhattacharya